

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK and THE BOARD
OF EDUCATION FOR THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION and ELISABETH DEVOS, in
her official capacity as the Secretary of
Education,

Defendants,

FOUNDATION FOR INDIVIDUAL RIGHTS
IN EDUCATION

[Proposed] Intervenor-Defendant.

Civil Action No. 1:20-cv-4260-JGK

NOTICE OF SUPPLEMENTAL AUTHORITY

Proposed Defendant-Intervenor the Foundation for Individual Rights in Education (FIRE) respectfully submits this notice of supplemental authority to alert the Court to the attached order issued on July 6, 2020, in *Commonwealth of Pennsylvania v. Devos*, No. 20-1468 (D.D.C.). That case was filed on the same day as this one by seventeen States and the District of Columbia. The plaintiffs in *Commonwealth of Pennsylvania* challenge the same Department of Education rule that is at issue in this case, and they are pressing nearly identical legal theories. FIRE, together with the Independent Women's Law Center and Speech First, Inc., moved to intervene, offering essentially the same arguments for intervention that FIRE has presented to this Court. The *Commonwealth of Pennsylvania* court granted permissive intervention under Rule 24(b) over the plaintiff States' opposition. Presented with what in substance is the same motion on the same facts, this Court should likewise allow FIRE to intervene.

Dated: July 7, 2020

Respectfully submitted,

/s/ Charles J. Cooper

Charles J. Cooper (pro hac vice motion pending)
Brian W. Barnes (pro hac vice motion forthcoming)
Nicole J. Moss (pro hac vice motion forthcoming)
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 220-9600
ccooper@cooperkirk.com
bbarnes@cooperkirk.com
nmoss@cooperkirk.com

*Counsel for Foundation for
Individual Rights in Education*